

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSCAR RAMIREZ, JAVIER GUERRERO,
GERONIMO HERCULANO, PABLO RUTILIO,
MAGGIE ANDRES CRECENCIO, GUILLERMO ALVAREZ,
JUANA CRUZ HERNANDEZ, LEONIDAS MATEO,
ANYELI OVALLES HERNANDEZ, MIRNA REYES
MARTINEZ, RAMON ROSARIO, OMAR TAVERAS,
LUIS ESPINAL, and JUAN SALMERON on behalf of
themselves and others similarly situated,

No.: 14 -cv- 4030

Hon. Valerie E. Caproni

**AFFIDAVIT OF LUIS ESPINAL IN
SUPPORT OF PLAINTIFFS'
REQUEST FOR CONDITIONAL
CLASS CERTIFICATION**

Plaintiffs,

v.

M L RESTAURANT, CORP., M.L. SAN JOSE ENTERPRISES, CORP.,
d/b/a LIBERATO RESTAURANT, ANTONIO MANUEL LIBERATO,
FERNANDO LIBERATO, VICTOR LIBERATO, NELSON GOMEZ,
LUCY GOMEZ, SARAH VALLEJO, NANA (LNU), and ROMEO (LNU)
jointly and severally,

Defendants

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State of New York)

) ss.:

County of New York)

LUIS ESPINAL, residing at 2418 University Ave., Apt. 2-S, Bronx, New York, being duly
sworn, deposes and says:

1. Liberato Restaurant is a restaurant with locations at 1 West 183rd St. and 10 West
Burnside Avenue, County of the Bronx, State of New York, open seven days per week.
2. I was hired at the Burnside location in May of 2010 and worked there until
December 2012.

3. I worked the nightshift, and fourteen other workers worked alongside me in the service area, not including managers.

4. For the first three months I was the sandwich maker. After that time I had a rotating position and was assigned to different jobs depending on the day of the week. One day I was the sandwich maker, another I took phone orders, another day I packed orders for delivery and on Friday, Saturday, and Sunday I served customer directly at the counter.

5. In the first three months of work of my employment I worked seven days a week ten (10) hours a day. After three months I worked six days a week ten (10) hours. In January 2011, I was cut to nine (9) hours a day.

6. When I worked six days a week, I received \$210, and when I worked seven days I received \$240. I was paid in cash every week.

7. When working behind the counter, I receive tips from customers. Other days when preparing sandwiches or deliveries I did not receive tips directly, but every day I was included in the tip pool, and received tips in addition to my weekly wages.

8. When I received tips, the manager required that I give them to him or her to hold until the end of shift. At the end of the shift, the manager returned the pooled tips to the workers to divide up.

9. No manager ever explained how the tip pool worked.

10. When the tips were distributed I did not receive any record of the tips received. I do not believe that any other worker in the tip pool received records.

11. At no time did I receive overtime for hours worked in excess of forty (40) per week. This was also true of my coworkers.

12. At no time did I receive a break of more than ten (10) minutes per shift.

13. Neither I nor my co-workers ever received a statement with our wages.

14. For my entire time at Liberato I had to sign in a book to receive my pay, but the manager did not tell me why I had to sign. The manager had me sign the book so quickly that I never had an opportunity to see what the book said. I once heard the manager Nelson telling other workers that they must not ask about what the book says.

15. I have reason to believe that my coworkers and I were subjected to similar treatment.

WHEREFORE, it is respectfully urged that the request for conditional certification of a representative class be granted.

Sworn to before me this



LUIS ESPINAL

29th day of September 2014.



Notary Public

REBECCA T. ISHAK
Notary Public, State of New York
No. 01IS6286012
Qualified in Queens County
Commission Expires July 22, 2017